

**IN THE UNITED STATE DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION**

UNITED STATES OF AMERICA)	
)	
v.)	CASE NO. : 1:17cr00027
)	
JOEL A. SMITHERS,)	
Defendant)	

ORDER

This matter is before the undersigned on the Motion To Withdraw As Counsel, (Docket Item No. 135), filed by defense counsel and the General Affidavit filed by the defendant, seeking appointment of new defense counsel and/or a continuance, (Docket Item No. 136), of the trial currently scheduled for April 29 to May 24, 2019, (“Motions”). The Motions were heard before the undersigned by telephone conference call, including an ex parte hearing with defense counsel and the defendant, on April 22, 2019. For the following reasons, the Motions are **DENIED**.

The court notes that this felony criminal case has been pending since the return of the Indictment against the defendant on September 12, 2017. A Superseding Indictment was issued against the defendant on December 18, 2017. Current counsel was appointed by the court to represent the defendant On May 22, 2018. By Order entered June 5, 2018, the Government was required to provide defense counsel with the materials described in Federal Rules of Criminal Procedure Rule 16(a)(1) by no later than June 28, 2018.

Thus, counsel and the defendant have had access to the disclosures made by the Government since June 2018. Furthermore, while the defendant asserts that he is not prepared for trial, defense counsel has not made any representation to the court that he has not had adequate time to prepare to defend this case. The court also notes that the defendant repeatedly has admitted that he has not traveled to Virginia to review the materials disclosed by the Government or to meet with or assist his counsel in his defense. By Order entered April 2, 2019, the court approved the placement of these materials at a secure location in the defendant's district of residence in North Carolina in an attempt to facilitate his review of the materials since the defendant would not travel to Virginia to do so. Also, the court has approved funds for defense counsel to hire two separate medical experts to review the medical evidence in the case and to assist with the defense of the case.

Based on the above, the court has no reason to believe that defense counsel's preparation of a defense in this case has been negatively impacted by anything other than the defendant's failure to assist in trial preparation. Therefore, the Motions are denied, and the trial of this case will go forward as scheduled beginning April 29, 2019.

It is **SO ORDERED**.

ENTERED: April 23, 2019.

/s/ Pamela Meade Sargent
UNITED STATES MAGISTRATE JUDGE